IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7020 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYENDRASINH DANUBHA CHUDASMA

Versus

TALUKA PANCHAYAT

Appearance:

MR HR LATHIGARA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 13/09/2002

ORAL JUDGEMENT

#. By filing this petition under Article 226 of the Constitution of India, the petitioner, i.e. Shri Jayendrasinh Danubha Chudasma, who is employed as workcharged Driver since May 13, 1983, by respondent No.1, has prayed to issue a writ of Mandamus or any other appropriate writ or order directing the respondents to regularize his services as a Driver and grant the pay -scale and other benefits available to a regularly selected Driver.

#. The District Planning Board had allotted an ambulance van to Dhandhuka Taluka Nagar Panchayat. No one was available to drive the same. The petitioner has passed VII standard examination. He is possessing a valid driving licence authorizing him to drive heavy motor vehicle, and has workable knowledge of motor mechanism. Therefore, he made an application dated April 29, 1983, to Dhandhuka Taluka Panchayat, District Ahmedabad, and prayed to appoint him on the post of Driver. On the date of making application, he was not more than 35 years of age and was also possessing three years' driving experience. His application was considered by respondent No.1 favourably and by an order dated May 13,1983, he was appointed as workcharged Driver in the pay-scale of Rs.260-400 on the basis of employment for 29 days in a month or till regularly selected candidate by the District Panchayat, Ahmedabad, was made available to the respondent No.1. Said order is produced by the petitioner at Annexure-A to the petition. After making appointment of the petitioner on the post of Driver, the Executive Committee of the Taluka Panchayat, Dhandhuka, considered the matter in its General Meeting which was held on July 29, 1983, wherein Resolution No.41 was passed, a copy whereof is produced by the petitioner at Annexure-B to the petition. In the said Resolution, it was recorded that the petitioner, as a Driver, was maintaining cordial relations with people at large, and as he had vast driving experience, his appointment on the post of Driver in the pay-scale of Rs.260-400 be continued subject to the approval of the District Panchayat. Again, the Taluka Development Officer, Dhandhuka, passed an order dated August 11, 1983, mentioning that the employment of the petitioner on the basis of 29 days' service in a month be dispensed with, and that with effect from July 1, 1983, he should be appointed as a Driver on temporary basis. On the same day, i.e. on August 11, 1983, the Taluka Development Officer, Dhandhuka, sent a proposal to the District Panchayat, Ahmedabad, requesting the District Panchayat to grant approval to the appointment of the petitioner made on temporary basis. The recommendation made by the Taluka Development Officer, Dhandhuka, is produced by the petitioner collectively at Annexure-C to the petition. On receipt of the recommendation from the Taluka Development Officer, Dhandhuka, the matter was considered by the District Panchayat, Ahmedabad, and the District Development Officer, Ahmedabad, by his letter dated September 9, 1983, informed the Taluka Development Officer, Dhandhuka, that the District Panchayat, Ahmedabad, had approved the appointment of the petitioner

on the post of Driver purely on temporary and workcharged basis. It was also indicated in the said order that on regularly selected candidate being available, the petitioner would be liable to be discharged from service. The order passed by the District Development Officer, Ahmedabad, on September 9, 1983, is produced by the petitioner at Annexure-D to the petition. From the record of the petition, it is evident that one Shri Ganibhai Zinabhai Chopda was appointed on regular basis as a Driver by respondent No.1 - Panchayat and he retired from services with effect from July 31, 1988, on attaining the age of superannuation. Therefore, the Taluka Development Officer, Dhandhuka, passed an order on July 30, 1988, requiring said Shri Ganibhai Zinabhai Chopda to hand over the charge of Jeep which he was driving, to the present petitioner. This order is produced by the petitioner at Annexure-E to the petition. Though the petitioner was appointed as Driver on May 13, 1983, he was not given regular appointment nor his services were regularized. Therefore, he made an application dated July 29, 1988, to the District Panchayat, Ahmedabad, and prayed to appoint him as a Driver on regular basis. The said representation is produced by the petitioner at Annexure-F to the petition. The representation made by the petitioner was not responded to at all by the District Panchayat, Ahmedabad. Therefore, another representation dated December 21, 1988, was made by the petitioner repeating the said prayer but that was not considered at all. The case of the petitioner is that he is serving as a Driver on temporary basis since years on a clear sanctioned post and denial of payment of regular salary to him is contrary to the provisions enshrined in Article 39 of the Constitution. What is claimed is that the action of the respondents in treating him as workcharged employee since years is arbitrary and therefore, the Court should direct the respondents to regularize his services. Under the circumstances, the petitioner has filed the present petition and claimed reliefs to which reference is made earlier.

#. On service of notice Shri S.A.Bandi, Taluka Development Officer, Dhandhuka Taluka Panchayat, Dhandhuka, has filed affidavit-in-reply on December 18, 1989 on behalf of respondent No.1. In the reply, it is interalia stated that the post of Driver of the ambulance van a is not sanctioned one and therefore, the petitioner is not entitled to the reliefs claimed in the petition. It is asserted in the reply that temporary appointment of the petitioner which was made by respondent No.1 was approved by respondent No.2 on certain conditions and the

petitioner is continued on the post of Driver because regularly selected driver is not made available by the Ahmedabad District Panchayat. What is stressed in the reply is that the ambulance van having been surrendered to the District Panchayat, the petitioner has become surplus and is not entitled to relief of regularization of his services. It is also stated in the reply that the petitioner is driving another vehicle of District Panchayat for which a post of Driver is sanctioned and as respondent No.1 is expecting appointment of regularly selected Driver on permanent basis, the petition should be dismissed.

#. I have considered the submissions advanced at the bar and the documents forming part of the petition.

#. The contention that the petitioner is not regularly selected for the post of Driver and therefore the petition should be dismissed has no merits. In this regard, it would be instructive to refer to a decision of the Supreme Court rendered in the case of Arunkumar Rout and others v. State of Bihar and others, reported in 1998(1) SLR 61. In the said case, the appellants, twenty in number, had filed a writ petition before the Patna High Court claiming regularization of their services. The writ petition was dismissed by the High Court and the matter was carried before the Supreme Court. It was found that all the twenty appellants were appointed on January 1, 1980, by the Civil Surgeon, Dumka, in Class III and IV posts as daily wagers. On the recommendation of the Appointment Committee, the services of the appellants were regularized. However, on August 25, 1993, the District Level Establishment Committee had issued notices calling upon the appellants to show cause as to why their appointments should not be cancelled in view of the fact that their appointments were irregular. Ultimately, on October 14, 1993, the services of the appellants were terminated. It was found that as a matter of fact, at the time of initial appointment, no advertisement had been given and the names of the appellants were also not sponsored by the employment exchange. However, there was no dispute that they were not lacking any requisite qualifications for appointment to the respective posts in Class III and IV, nor there was anything on record to suggest that in obtaining the appointments, the appellants were guilty of fraud or privy to any irregularity. The Supreme Court noticed the principle that in the matter of getting appointment in Government service, the procedure required to be followed for such appointments cannot be by-passed and if the initial appointment was illegal on account of not

following the procedure for appointment, the incumbent obtaining the appointment without following the due procedure cannot claim regularization as matter of right. However, in view of long service rendered by the appellants, the Supreme Court considered the question of regularization of their services in the light of admitted facts, namely (i) that salary had been paid to the appellants until their services were terminated, (ii) that there was nothing on record to suggest that the services rendered by the appellants were otherwise unsatisfactory, (iii) that they did not lack any requisite qualification, and (iv) that they had been appointed against sanctioned posts. After considering the above referred to relevant factors, the Court had given certain directions to the respondents.

#. Applying the principle laid down by the Supreme Court in the above referred to decision, to the facts of the present case, it is found that though at the time of initial appointment, no advertisement had been given, nor the name of the petitioner was sponsored by the Employment Exchange, there is no manner of doubt that the application submitted by the petitioner on April 29, 1983, was entertained by the respondents, and he was appointed in the pay-scale of Rs.260-400 on temporary basis. There is nothing on record to suggest that in obtaining the appointment in question, the petitioner was guilty of any fraud or privy to any irregularity. It is an admitted position that the petitioner was fully qualified to be appointed as a Driver when he was appointed as a Driver in the year 1983. In fact, the respondent No.1 was pleased with satisfactory services rendered by the petitioner as well as his behaviour, and had therefore, sought approval to its action to appoint the petitioner as a Driver on temporary basis, from the District Panchayat, Ahmedabad. The Ahmedabad District Panchayat had also considered the matter and granted approval which is quite evident from the contents of the order dated September 9, 1983. However, for the reasons stated in paragraph-9 of the affidavit-in-reply, the ambulance van had to be surrendered to the District Panchayat, Ahmedabad, but before that, the petitieonr was appointed as a Driver on temporary basis on a sanctioned post which was held by Shri Ganibhai Zinabhai Chopda, and which had fallen vacant on his retirement from services. Though in the affidavit-in-reply, filed in the year 1989, it was stated that the appointment of regularly selected Driver was imminent, it is an admitted position that till date, no regularly selected candidate is available, and the petitioner is performing duties as a Driver uninterruptedly since 1983 and on a sanctioned post of

Driver since July 1988. Because of inaction on the part of the respondents at the relevant time, the petitioner is placed in a precarious position because now it will be almost impossible for him to get employment as a Driver anywhere else. Therefore, normally though direction to regularise services of a person appointed on temporary basis cannot be issued, it has become a compelling necessity to regularise services of the petitioner to avoid heart burning to him and to achieve peace and harmony in service. When a regular Driver is entitled to a particular scale of pay and allowances when he discharges the same duties, merely because the petitioner is appointed temporarily, he cannot be denied of the same salary and allowance attached to the post. Having regard to the special facts of the case, as emerging from the record of the petition, the Court is of the opinion that interest of justice would be served if the respondents are directed to regularize the services of the petitioner on the post of Driver.

#. For the foregoing reasons, the petition succeeds. The respondents are directed to regularize the services of the petitioner as Driver on the establishment of respondent No.1 with effect from the date of judgment delivered in the instant petition as early as possible and preferably within three months from the date of judgment. The petitioner shall be paid the pay-scale which is admissible to the post of Driver, and all other benefits accordingly prospectively i.e. from the date of judgment in the instant petition and not retrospectively, i.e. either from the date on which he had requested to regualrise his services or from the date of filing of the petition. However, for other benefits, his services will be treated as continuous one from August 1, 1988 because he is discharging duties as Driver on a sanctioned post since then. Rule is made absolute in aforesaid terms with no order as to costs.

(J.M.Panchal, J.)

(sunil)